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*Attorneys for Plaintiff the People of the State of
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**THE PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF
EDUCATION, et al.,**

Defendants.

Case No. 17-cv-07106-SK

**STIPULATION REGARDING
NARROWED SET OF DOCUMENTS
FOR FOIA REVIEW AND TIMELINES**

Date: January 13, 2019
Time: 9:00 a.m.
Courtroom: C, 15th Floor
Judge: Hon. Sallie Kim

RECITALS

1. On October 11, 2019, the Court ordered the U.S. Department of Education and Secretary DeVos (collectively, “Defendants”) to produce by October 25, 2019, a complete privilege log of documents withheld from the administrative record. The Court further ordered that alongside each entry on the privilege log, Defendants must indicate whether each document has already been provided to the public pursuant to Freedom of Information Act (“FOIA”) request(s). (Dkt. 81.)

1 2. The Court granted Defendants an extension until November 15, 2019. (Dkt. 88.)

2 3. Defendants filed a privilege log on November 15, 2019, (Dkt. 96) and, at the same
3 time, moved for relief from the Court's order that Defendants indicate whether each document
4 has already been provided to the public pursuant to FOIA request(s). (Dkt. 95).

5 4. California opposed Defendants' motion (Dkt. 102).

6 5. At the November 25, 2019 status conference (Dkt. 99), the parties agreed to meet
7 and confer to identify the most relevant documents from the privilege log for Defendants to
8 conduct a FOIA review and to submit a stipulation or competing proposals in advance of the
9 January 13, 2020 status conference.

10 6. During the meet-and-confer process, California provided Defendants with the
11 following six categories that may identify highly relevant documents from the privilege log
12 ("Categories"):

- 13 i. Documents that summarize or adopt findings or legal bases employed to
14 approve Corinthian borrower-defense claims prior to December 20, 2017.
- 15 ii. Documents that summarize or adopt findings or legal bases employed to
16 determine that full relief was appropriate for approved borrower-defense
17 claims prior to December 20, 2017.
- 18 iii. Documents that summarize or adopt findings or legal bases employed to
19 determine that certain education programs offered by Corinthian had minimal
20 or no value.
- 21 iv. Documents that summarize or adopt findings or legal bases employed to
22 determine that state law provides or does not provide the basis for relief due an
23 approved borrower-defense claim.
- 24 v. Documents that summarize or adopt findings or legal bases employed to allow
25 certain Corinthian borrower-defense claimants to rely on ED's findings about
26 Corinthian's misconduct and to attest to the elements of harm and reliance,
27 without the need to submit individualized evidence of harm to support their
28 claims.
- vi. Documents that summarize or adopt findings or legal bases employed to apply
ED's partial-relief methodology announced on December 20, 2017 to then-
pending Corinthian borrower-defense claims.

7. California agreed that it is not requesting that Defendants identify document
"drafts" from the privilege log, even if such drafts would otherwise qualify under one of
California's six categories. The parties agreed that "drafts" does not include situations (1) where a

1 draft is the latest version of a document and there is no final version or subsequent draft; or (2)
2 where a document is designated a “draft” but was actually operative or relied on by the agency.

3 8. California also provided Defendants with a list of exemplars of potentially highly
4 relevant documents (Attachment 1) and identified 40 documents on the privilege log that also
5 appear to be highly relevant (Attachments 2 and 3).

6 9. Defendants assert that they have already started to conduct a FOIA review on a
7 number of the specific documents identified by California in Attachments 1-3 that are non-drafts
8 and fall within the Categories.

9 **STIPULATION**

10 California and Defendants, through their respective counsel of record, stipulate as follows:

11 A. On or before January 17, 2020, using the Categories and Attachments 1-3,
12 Defendants will identify to California a proposed narrowed set of documents for FOIA review.
13 For each document in the narrowed set, Defendants will indicate the Category (or Categories) that
14 the document met for inclusion in the narrowed set.

15 B. The parties will then further meet and confer to finalize an agreed narrowed set of
16 documents for FOIA review by January 21, 2020,

17 C. On or before January 24, 2020, Defendants will provide California with a proposal
18 for when they will complete the FOIA review of the narrowed set of documents.

19 D. Defendants will file with the Court a report that identifies the agreed narrowed set
20 of documents for FOIA review and that states the completion date of that review.

21 E. Defendants will provide California with the results of the FOIA review on a rolling
22 basis, as timely as possible.

23 F. During the pendency of Defendants’ FOIA review, California may raise with the
24 Court privilege or other issues as reasonable and appropriate to efficiently advance this case.

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1 Dated: January 10, 2020

Respectfully submitted,

2 XAVIER BECERRA
Attorney General of California

3 /s/ Bernard A. Eskandari
4 BERNARD A. ESKANDARI
Supervising Deputy Attorney General

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6 *Attorneys for Plaintiff the People of the
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9 Dated: January 10, 2020

Respectfully submitted,

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11 MARCIA BERMAN
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12 /s/ Kevin P. Hancock
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14 KEVIN P. HANCOCK
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16 *Attorneys for Defendants*